

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 312 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KAKU PONJA

Appearance:

MR VB GHARANIYA, AGP for Appellant
MR PC KAVINA FOR MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. This Second Appeal is preferred against the judgment and order of learned District Judge, Rajkot, in Civil Appeal No. 117 of 1981, by which learned District Judge, Rajkot, confirmed the decree passed by the learned

Civil Judge (SD) at Rajkot, in Regular Civil Suit No. 998 of 1976, in favour of plaintiff Kaku Punja - respondent herein.

2. The fact on record goes to show that the respondent - Kaku Puja was serving as an Unarmed Head Constable in Police Department and under DSP, Rajkot, at the relevant point of time and he was a permanent employee. A charge sheet was issued against him on an allegation that while plaintiff - respondent herein was serving as Police Station Officer at Dhoraji Police Station on 25th May, 1971 from 20 hours to 09 hours, on 26th May, 1971, he received an information that a murder was committed at village Farenii. Plaintiff though was Police Station In-charge Officer, neither made any entry in the Station Diary nor he informed the Police Sub-Inspector. Departmental inquiry was proceeded against the plaintiff by SDPO, Morbi, who came to the conclusion that the plaintiff was guilty of the charges levelled against him. So, he recommended his findings to the Disciplinary Authority, that was DSP, Rajkot. DSP Rajkot, in turn issued show cause notice to the plaintiff for imposing the major penalty and directed him to submit his representation, if any. It appears that the plaintiff at that juncture filed a Civil Suit and obtained interim injunction against the above said proceedings. It further appears that the interim injunction was thereafter vacated. However, in reply to the show cause notice dated 2nd January, 1973, the plaintiff did not appear before the Disciplinary Authority and, therefore, Disciplinary Authority i.e. DSP, Rajkot, by his order dated 30th January, 1974, removed the plaintiff from service. The plaintiff respondent herein, filed an Appeal before the Dy. Inspector General of Police, which also was rejected. One more Appeal as provided under the Rules was also preferred by the plaintiff before the Inspector General of Police and vide order of Inspector General of Police dated 10th February, 1975, the Appeal met with the fate of rejection. Thereafter, the plaintiff filed above mentioned Regular Civil Suit No. 998 of 1976, in the Court of Civil Judge (SD) for declaration that the order passed by the DSP, DIGP and IGP were null and void, and that, he was required to be reinstated. After full-fledged trial, learned Civil Judge (SD), Rajkot, vide his judgment and order dated 23rd April, 1981, decreed the suit of the plaintiff and orders dated 30th January, 1974, 11th June, 1974 and 10th February, 1975,

came to be declared illegal and against the principle of natural justice. It was further declared that the plaintiff to be considered continued in service with all benefits and pay.

3. The State aggrieved by the said judgment and decree, filed First Appeal before the District Judge, Rajkot, being Regular Civil Appeal No.117 of 1981. Learned District Judge considered the submissions of both the sides and sustained the judgment and order of the learned Civil Judge (SD), Rajkot, only on the ground that the orders in question did not comply with Rule 4 of the Bombay Police (Punishments & Appeals) Rules, 1956, which is pertaining to give him reasons by Disciplinary Authority while awarding departmental punishment to any delinquent. Learned District Judge also observed that it

was open for the appellant therein to hear the plaintiff - delinquent and to make its own decision afresh after observing necessary provisions applicable to the facts of the case.

4. While filing this Appeal, this Court on 26th October, 1982 in Civil Application No. 3905 of 1982 also pleased to observe that it was open to the authority concerned to take suitable steps, if they so chose, to retrace the steps and start from the stage the matter has been held to be illegal. It was further observed that it was for the authorities to decide what they should do in this connection. It was submitted while hearing of this Appeal that till today the appellant has chosen not to take action in terms of the above said interim orders of this court.

5. While admitting the Appeal, following substantial question of law was framed by this court :

"Whether the order of reinstatement with full back wages is legal and proper, or whether the court should have left it open to the authorities to start from the stage of passing the order of penalty."

6. Learned AGP Mr. V.B. Gharania for the appellant - State and learned Advocate Mr.P.C.Kavina for M/s Thakkar Associates on behalf of the respondent were heard at length.

7. So far as the question of facts are concerned, the decision of the courts below have now become final. What is required to be adjudicated is a law point, and that is, whether the order of reinstatement made with full back wages is legal and proper. The cardinal principle of law is when a litigant approaches the Civil Court for certain reliefs, ordinarily if the court comes to the conclusion that a particular litigant is entitled to relief, then, it is the duty of law and the courts to give complete relief to such litigant. Unless and until effective and complete relief is given to a plaintiff, the whole or part of pronouncement of a civil court would become infructuous. It could not be envisaged that pronouncement of the civil courts and relief granted are infructuous.

8. In the present case, a declaration is sought that the order of removal from the service was void on the ground of non-compliance of the provisions applicable to the procedure contemplated. In these circumstances, if the court finds that the plaintiff is entitled to the relief claimed and the court satisfies only with a declaration of declaring the order of removal to be null and void, then the effect would be, despite of judicial pronouncement in favour of the plaintiff, after investigation of the claim putforth by the plaintiff, there will be no effective relief to the plaintiff and the judgment and order would become infructuous or futile. This would not be the concept of law. Therefore, where by civil courts the claims of the litigants are found genuine and when litigants are found entitled to reliefs, it is duty of the court to give effective relief to the concerned litigant so as to make judicial pronouncement meaningful and entitled him to enjoy the rights fully, which might have been decided by Civil Court after investigating the claims. A plaintiff who has established facts which would entitle him to the particular relief, and when he has claimed that relief, should not be debarred from obtaining that relief. Any relief claimed in consonance with the cause of action should be granted to the plaintiff. Not only that but in this case the relief claimed is consistent with the case raised in the pleading and defendant knew that this claim of the plaintiff is to be tried.

9. The matter is yet required to be considered from different angle of law. The cause of action accrued to the plaintiff was regarding the ultra vires orders of his removal from service. Law enjoins the duty on the plaintiff when he sues the defendant on this cause of

action to prefer whole of the claim for which he is entitled to make in respect of the cause of action. When the plaintiff himself to sue or relinquishes any of the claim consistent with the cause of action, then he is debarred from claiming such relief in future. This is the principle enacted in O.2 R.(2) of Civil Procedure Code. The principle underlying is that defendant should not be twice vexed for one and the same cause. Undoubtedly, the claim for back wages and reinstatement is a part and parcel of a cause of action. The claim is that the order of removal be set aside on the ground of the same being ultra vires. Therefore, the position is if plaintiff does not claim the relief of reinstatement and back wages, then he will not be entitled in future to claim the same relief which is in consonance with the cause of action, which is accrued to the plaintiff and hence the plaintiff is by law bound to claim the relief of reinstatement and back wages with the relief of declaration that his order of removal is ultra vires. When in pursuance of O.2 R(2) of the Civil Procedure Code, the relief is claimed by the plaintiff, and as aforesaid, if he could establish the fact entitling him the relief claimed, the plaintiff cannot be debarred from getting the said relief.

10. Therefore, in this case, granting of relief in favour of the plaintiff regarding reinstatement with full back wages is neither illegal nor improper, but perfectly in consonance with the principle of civil law and by no stretch of reasoning, it could be said that the consequential relief granted by the court is redundant.

11. So far as the next part of the substantial question of law as framed is concerned, a point sought to be made that instead of declaring the impugned orders void and illegal, the concerned disciplinary authority or concerned other authorities could have been directed to start fresh inquiry de novo. This is also a point which goes to the root of the jurisdiction of the civil court. It is established principle of law followed since years that no civil court would sit a court of appeal over a decision of executive or administrative authorities. Civil Court has jurisdiction to ascertain whether any given disciplinary proceedings legitimately proceeded with according to the provisions of law applicable and whether any civil right of the litigant is jeopardized. Civil Court is not an appellate court of disciplinary authorities. In such circumstances, the order of remanding the matter to the disciplinary authority for de novo enquiry would be without jurisdiction so far as civil courts are concerned. Hence, when this court sits

as Civil Court in Second Appeal, cannot remand the proceedings back to the disciplinary authority with direction to initiate de novo inquiry.

12. In this view of the matter, the substantial question of law is decided with an answer that the order of reinstatement with full back wages is quite legal and proper and that the civil court cannot remand the present disciplinary proceedings to the disciplinary authority to start de nova inquiry, but as stated above, in an interim order, it is open for the concerned authority to start afresh from the stage at which the actions are held invalid and void.

13. In view of the aforesaid reasons, there being no substance in the Appeal and the same is dismissed with no order as to costs.

(J.R. Vora, J.)

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